



6820-B3

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

6 CFR Chapter X

[PCLOB; Docket No. 2013-0005; Sequence 1]

RIN 0311-AA01

Freedom of Information, Privacy Act, and Government in the Sunshine Act Procedures

AGENCY: Privacy and Civil Liberties Oversight Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Privacy and Civil Liberties Oversight Board is proposing regulations to implement the Freedom of Information Act, the Privacy Act of 1974, and the Government in the Sunshine Act. This proposed rulemaking describes the procedures for members of the public to request access to records. In addition, this notice also proposes procedures for the Board's responses to these requests, including the timeframe for response and applicable fees.

DATES: You must submit comments on or before **[INSERT DATE SIXTY DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by the docket number in the heading of this document, by the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Mail:** Written comments may be submitted by mail to: Privacy and Civil Liberties Oversight Board, c/o General Services Administration, Agency Liaison Division, ATTN: M. Conrad, 849C, 1275 First Street, NE, Washington, D.C. 20417.

To ensure proper handling, please include the docket number on your correspondence. See SUPPLEMENTARY INFORMATION for further information about submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Reingold, Chief Administrative Officer, Privacy and Civil Liberties Oversight Board, at 202-331-1986 or susanbr@dni.gov.

SUPPLEMENTARY INFORMATION: Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Information made available to the public includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. Additional information about the handling of personally identifiable information submitted for the public record is available in the system of records notice for the federal dockets management system, EPA-GOVT-2, published in the FEDERAL REGISTER at 70 FR 15086 (March 24, 2005).

I. Background

The Privacy and Civil Liberties Oversight Board (Board) was created as an independent agency within the executive branch by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110-53. It has two primary purposes: 1) to analyze and review actions the executive branch takes to protect the United States from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties; and 2) to ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the United States against terrorism.

This rulemaking action would implement the Board's procedures required under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended; the Privacy Act of 1974 (Privacy Act), 5 U.S.C. 552a, as amended; and the Government in the Sunshine Act (Sunshine Act), 5 U.S.C. 552b, as amended. The FOIA requires agencies to implement procedures for public access to records. This proposed rulemaking describes the procedures for members of the public to request access to records. In addition, this notice also proposes procedures for the Board's responses to these requests, including the timeframe for response and applicable fees.

The Privacy Act imposes requirements on agencies that maintain systems of records pertaining to individuals. These requirements include procedures for an individual to request access to or amendment of information about him or herself maintained in a system of records. This proposed rulemaking describes the Board's procedures for providing individuals access to their records or to request amendment of those records, including the timeframes for response and any applicable fees.

The Sunshine Act requires public meetings for the deliberations of federal agencies headed by collegial bodies comprised of members a majority of whom are appointed by the President with the advice and consent of the Senate. Agencies subject to the Sunshine Act must publish procedures for such public meetings. As an agency headed by a Board comprised entirely of individuals appointed by the President with the advice and consent of the Senate, the Board is subject to the Sunshine Act and must publish a rulemaking to implement its public meeting procedures, including procedures to close meetings when permitted by the Sunshine Act.

Most of the proposed regulatory provisions contained in this notice of proposed rulemaking are drawn directly from requirements specified in the FOIA, Privacy Act, and Sunshine Act. In addition, the Board modeled its proposed procedures on those already adopted by other federal agencies to incorporate for its own use those practices that seem to represent “best practices” for FOIA, Privacy Act, and Sunshine Act administration.

II. Regulatory Analysis and Notices

Executive Order 12866

This proposal is not a “significant regulatory action” within the meaning of Executive Order 12866. The economic impact of these regulations should be minimal, therefore, further economic evaluation is not necessary.

Regulatory Flexibility Act, as amended

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 601 et seq.), generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions. The Board considered the effects on this proposed rulemaking on small entities and certifies that these proposed rules will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, requires each agency to assess the effects of its regulatory actions on state, local, and tribal govern-

ments, and the private sector. Agencies must prepare a written statement of economic and regulatory alternatives anytime a proposed or final rule imposes a new or additional enforceable duty on any state, local, or tribal government or the private sector that causes those entities to spend, in aggregate, \$100 million or more (adjusted for inflation) in any one year (defined in UMRA as a “federal mandate”). The Board determined that such a written statement is not required in connection with these proposed rules because they will not impose a federal mandate, as defined in UMRA.

National Environmental Policy Act

The Board analyzed this action for purposes of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and determined that it would not significantly affect the environment; therefore, an environmental impact statement is not required.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. This proposed action does not include an information collection for purposes of the PRA.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the Board determined that it does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

List of Subjects

6 CFR Part 1001

Administrative practice and procedure; Freedom of Information; Confidential Business Information; Privacy

6 CFR Part 1002

Administrative practice and procedure; Privacy

6 CFR Part 1003

Administrative practice and procedure; Public availability of information; Meetings

In consideration of the foregoing, the Board proposes to amend title 6, Code of Federal Regulations, by adding chapter X, consisting of parts 1001-1099, to read as follows:

Chapter X—Privacy and Civil Liberties Oversight Board

**PART 1001—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE
FREEDOM OF INFORMATION ACT**

Sec.

1001.1 Purpose and Scope.

1001.2 Definitions.

1001.3 Availability of records.

1001.4 Categories of exemptions.

1001.5 Requests for records.

1001.6 Responsibility for Responding to Requests.

1001.7 Administrative Appeals.

1001.8 Timeframe for Board's response to a FOIA request or Administrative Appeal.

1001.9 Business Information.

1001.10 Fees.

Authority: 5 U.S.C. 552, as amended; Executive Order 12600.

§ 1001.1 Purpose and Scope.

The regulations in this part implement the provisions of the FOIA.

§ 1001.2 Definitions.

The following definitions apply in this part:

Board means the Privacy and Civil Liberties Oversight Board, established by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110-53.

Chairman means the Chairman of the Board, as appointed by the President and confirmed by the Senate under section 801(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110-53, or any person to whom the Board has delegated authority for the matter concerned.

Chief FOIA Officer means the Chairman or, in the absence of a Chairman, the senior official to whom the Board delegated responsibility for efficient and appropriate compliance with the FOIA.

Commercial use request means a FOIA request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, including pursuit of those interests through litigation.

Confidential business information means trade secrets and confidential, privileged, or proprietary business or financial information submitted to the Board by a person.

Direct costs means those expenses the Board actually incurred to search for, duplicate, and, in the case of commercial use requesters, review documents in response to a FOIA request. Direct costs include, but are not limited to, the salary of the employee performing the work and costs associated with duplication.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

FOIA means the Freedom of Information Act, 5 U.S.C. 552, as amended.

FOIA Officer means the individual to whom the Board delegated authority to carry out the Board's day-to-day FOIA administration.

FOIA Public Liaison means the individual designated by the Chairman to assist FOIA requesters with concerns about the Board's processing of their FOIA request.

Non-commercial scientific institution means an organization operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any product or research, and not operated on a commercial basis.

Record means any writing, drawing, map, recording, diskette, DVD, CD-ROM, tape, film, photograph, or other documentary material, regardless of medium, by which information is preserved, including documentary material stored electronically.

Redact means delete or mark over.

Representative of the news media means any person or entity that gathers information of potential public interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

Submitter means any person or entity from whom the Board obtains confidential business information, directly or indirectly.

Unusual circumstances means, to the extent reasonably necessary for the proper processing of a FOIA request:

- (1) The need to search for and collect the requested records from physically separate facilities;
- (2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
- (3) The need for consultation with another agency having a substantial interest in the determination of the request.

§ 1001.3 Availability of Records.

- (a) In accordance with 5 U.S.C. 552(a)(1), the Board publishes the following records in the Federal Register and makes an index of the records publicly available:

- (1) Descriptions of the Board's organization and the established places at which, the employees from whom, and the methods by which, the public may obtain information, submit documents, or obtain decisions;
 - (2) Statements of the general course and method by which the Board's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
 - (3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
 - (4) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by the Board; and
 - (5) Each amendment, revision, or repeal of any material listed in paragraphs (a)(1) through (4) of this section.
- (b) In accordance with 5 U.S.C. 552(a)(2), the Board shall make the following materials available for public inspection and copying:
- (1) Statements of policy and interpretation that have been adopted by the Board and not published in the Federal Register;
 - (2) Administrative staff manuals and instructions to staff that affect a member of the public;
 - (3) Copies of all records, regardless of the form or format, which have been released to any person under paragraph (c) of this section and that, because of their

nature or subject matter, the Board determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

- (4) A general index of the records referred to in paragraph (b)(3) of this section.
- (c) In accordance with 5 U.S.C. 552(a)(3), the Board shall make available, upon proper request, as described in section 5 of this part, all non-exempt Board records, or portions of records, not previously made public under paragraphs (a) and (b) of this section.
- (d) The FOIA applies only to Board records in existence at the time of the request; the FOIA does not require that the Board create new records in order to respond to FOIA requests.

§ 1001.4 Categories of exemptions.

- (a) The FOIA does not require disclosure of matters that are:
 - (1) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are, in fact, properly classified under executive order;
 - (2) Related solely to the internal personnel rules and practices of the Board;
 - (3) Specifically exempted from disclosure by statute (other than the Government in the Sunshine Act, 5 U.S.C. 552b, as amended), provided that such statute:
 - (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of matters to be withheld; and
 - (ii) If enacted after October 28, 2009, specifically cites to Exemption 3 of the FOIA, 5 U.S.C. 552(b)(3);

- (4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) Inter-agency or intra-agency memoranda or letters that would be available at law to a party in litigation with the Board;
- (6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:
 - (i) Could reasonably be expected to interfere with enforcement proceedings;
 - (ii) Would deprive a person of a right to a fair trial or impartial adjudication;
 - (iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
 - (iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;
 - (v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

- (vi) Could reasonably be expected to endanger the life or physical safety of any individual.
 - (8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
 - (9) Geological and geophysical information and data, including maps, concerning wells.
- (b) [Reserved]

§ 1001.5 Request for records.

- (a) You may request copies of records under this part in writing addressed to FOIA Officer, Privacy and Civil Liberties Oversight Board, c/o General Services Administration, Agency Liaison Division, 1275 First Street, NE, ATTN: 849C, Washington, D.C. 20417.
- (b) Your request shall reasonably describe the records sought with sufficient specificity regarding names, dates, and subject matter to permit the FOIA Officer to locate the records. If the FOIA Officer cannot locate responsive records based on your written description, you will be notified and advised that further identifying information is necessary before the request can be fulfilled.
- (c) Your request should specify your preferred form or format (including electronic formats) for the records you seek. We will accommodate your request if the record is readily available in that form or format. When you do not specify the form or format of the response, we will provide responsive records in the form or format most accessible to us.

(d) The Board interprets your FOIA request as your agreement to pay up to \$25 in fees chargeable under § 1001.10 to fulfill your request, unless you specify a different amount or request a fee waiver, as further described in § 1001.10.

§ 1001.6 Responsibility for responding to requests.

(a) In general. The Board delegates authority to grant or deny FOIA requests in whole or in part to the FOIA Officer. When conducting a search for responsive records, the FOIA Officer generally will search for records in existence on the date of the search. If another date is used, the FOIA Officer shall inform the requester of the date used.

(b) Responses. The FOIA Officer will notify you of his or her determination to grant or deny your FOIA request in the time frame stated in § 1001.8. For any adverse determination, including those regarding any disputed fee matter; a denial of a request for a fee waiver; or a determination to withhold a record, in whole or in part, that a record does not exist or cannot be located, or to deny a request for expedited processing, the notice shall include the following information:

- (1) The name(s) of any person responsible for the determination to deny the request in whole or in part;
- (2) A brief description of the reason(s) for the denial, including reference to any applicable FOIA exemptions;
- (3) An estimate of the volume of information withheld, if applicable. This estimate does not need to be provided if it is ascertainable based on redactions in partially disclosed records or if the disclosure of the estimate would harm an interest protected by an applicable FOIA exemption; and

- (4) A statement that the adverse determination may be appealed and a description of the requirements for an appeal under § 1001.7.
- (c) Consultations and referrals.
- (1) Upon receipt of a FOIA request for a record within the Board's possession, the FOIA Officer shall determine whether the Board or another federal agency is best able to determine whether the records are exempt from disclosure under the FOIA and, if so, whether the records should be released as a matter of administrative discretion. If the FOIA Officer determines that another agency is better able to evaluate the releasability of the record, the FOIA Officer shall:
- (i) Respond to the FOIA requester after consulting with any other federal agency that has an interest in the record; or
 - (ii) Refer the responsibility for responding to the request to the department or agency best able to determine whether to disclose it (but only if that other department or agency is subject to FOIA). Ordinarily, the department or agency that originated the record will be presumed best able to determine whether to disclose it.
- (2) Whenever a request is made for information that has been classified or may be appropriate for classification by another agency, the FOIA Officer shall refer the responsibility for responding to that portion of your request to the agency that classified the information, should consider the information for classification, or has the primary interest in it, as appropriate. Whenever a record contains information that the Board has derivatively classified because it contains information classified by another agency, the FOIA Officer shall refer the responsibility for

responding to the request regarding that information to the agency that classified the underlying information.

- (3) If responsibility for responding to a request is referred to another department or agency, the FOIA Officer shall notify you of the referral. This notice shall identify the part of the request that has been referred and the name of each department or agency to which the request, or part of the request, has been referred.

§ 1001.7 Administrative appeals.

- (a) You may appeal an adverse determination related to your FOIA request, or the Board's failure to respond to your FOIA request within the prescribed time limits, to the Chief FOIA Officer, Privacy and Civil Liberties Oversight Board, c/o General Services Administration, Agency Liaison Division, 1275 First Street, NE, ATTN: 849C, Washington, D.C. 20417.
- (b) Your appeal must be in writing and received by the Chief FOIA Officer within 60 days of the date of the letter denying your request, in whole or in part, or, in the case of the Board's failure to respond within the statutory time frame, of the date by which the Board should have responded to your request.
- (c) For the quickest possible handling, your appeal letter and envelope should be marked "Freedom of Information Act appeal."
- (d) Your appeal letter should state facts and cite legal or other authorities in support of your request.
- (e) The Chief FOIA Officer shall respond to all administrative appeals in writing and within the time frame stated in section 1001.8(d). If the decision affirms, in whole or in part, the FOIA Officer's determination, the letter shall contain a statement of the reasons

for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA's provisions for court review. If the Chief FOIA Officer reverses or modifies the FOIA Officer's determination, in whole or in part, you will be notified in writing and your request will be reprocessed in accordance with that decision.

§ 1001.8 Time frame for Board response.

- (a) In general. The Board ordinarily shall respond to requests according to their order of receipt.
- (b) Multi-track processing. The Board may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work or time needed to process the request.
- (c) Initial decisions. The Board shall determine whether to comply with a FOIA request within 20 working days after our receipt of the request, unless the time frame for response is extended due to unusual circumstances as further described in paragraph (f) of this section. A request is received by the Board, for purposes of commencing the 20-day timeframe for its response, on the day it is received by the FOIA Officer or, in any event, not later than ten days after the request is first received by any Board office.
- (d) Administrative Appeals. The Chief FOIA Officer shall determine whether to affirm or overturn a decision subject to administrative appeal within 20 working days after receipt of the appeal, unless the time frame for response is extended in accordance with paragraph (e) of this section.
- (e) Tolling timelines. We may toll the 20-day timeframe set forth in paragraphs (c) or (d) of this section:

- (1) One time to await information that we reasonably requested from you, as permitted by 5 U.S.C. 552(a)(6)(A)(iii)(I);
 - (2) As necessary to clarify with you issues regarding the fee assessment.
 - (3) If we toll the time frame for response under paragraphs (e)(1) or (2) of this section, the tolling period ends upon our receipt of your response.
- (f) In the event of unusual circumstances, we may extend the time frame for response provided in paragraphs (c) or (d) of this section by providing you with written notice of the unusual circumstances and the date on which a determination is expected to be made. Where the extension is for more than ten working days, we will provide you with an opportunity either to modify your request so that it may be processed within the statutorily-prescribed time limits or to arrange an alternative time period for processing your request or modified request.
- (d) Expedited processing. You may request that the Board expedite processing of your FOIA request. To receive expedited processing, you must demonstrate a compelling need for such processing.
- (1) For requests for expedited processing, a "compelling need" involves:
 - (i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
 - (ii) A request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged federal government activity.

- (2) Your request for expedited processing must be in writing and may be made at the time of the initial FOIA request or at any later time.
- (3) Your request for expedited processing must include a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for requesting expedited processing. If you are a person primarily engaged in disseminating information, you must establish a particular urgency to inform the public about the federal government activity involved in the request, beyond the public's right to know about government activity generally.
- (4) The FOIA Officer will decide whether to grant or deny your request for expedited processing within ten calendar days of receipt. You will be notified in writing of the determination. Appeals of adverse decisions regarding expedited processing shall be processed expeditiously.

§ 1001.9 Business information.

- (a) Designation of Confidential Business Information. If you submit business information, you must use a good-faith effort to designate, by use of appropriate markings, at the time of submission or at a reasonable time thereafter, any portions of your submission that you consider to be exempt from disclosure under FOIA Exemption 4, 5 U.S.C. 552(b)(4). Your designation will expire ten years after the date of submission unless you request, and provide justification for, a longer designation period.
- (b) Notice to submitters. Whenever you designate confidential business information as provided in paragraph (a) of this section, or the Board has reason to believe that your submission may contain confidential business information, we will provide you with

prompt written notice of a FOIA request that seeks your business information. The notice shall:

- (1) Give you an opportunity to object to disclosure of your information, in whole or in part;
 - (2) Describe the business information requested or include copies of the requested records or record portions containing the information; and
 - (3) Inform you of the time frame in which you must respond to the notice.
- (c) Opportunity to object to disclosure. The Board shall allow you a reasonable time to respond to the notice described in paragraph (b) of this section. If you object to the disclosure of your information, in whole or in part, you must provide us with a detailed written statement of your objection. The statement must specify all grounds for withholding any portion of the information under any FOIA exemption and, when relying on FOIA Exemption 4, it must explain why the information is a trade secret or commercial or financial information that is privileged and confidential. If you fail to respond within the time frame specified in the notice, the Board will conclude that you have no objection to disclosure of your information. The Board will only consider information that we receive within the time frame specified in the notice.
- (d) Notice of intent to disclose. The Board will consider your objection and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever the Board decides to disclose business information over your objection, we will provide you with written notice that includes:
- (1) A statement of the reasons why each of your bases for withholding were not sustained;

- (2) A description of the business information to be disclosed; and
 - (3) A specified disclosure date, which shall be a reasonable time after the notice.
- (e) Exceptions to the notice requirement. The notice requirements of paragraphs (c) and (d) of this section shall not apply if:
- (1) The Board determines that the information shall not be disclosed;
 - (2) The information lawfully has been published or has been officially made available to the public;
 - (3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600;
 - (4) The designation made by the submitter under paragraph (a) of this section appears obviously frivolous, except that, in such a case, the Board shall, within a reasonable time prior to the date the disclosure will be made, give the submitter written notice of the final decision to disclose the information.
- (f) Notice to requesters. Whenever we provide a submitter with the notice described in paragraph (b) of this section, we also will provide notice to the requester that notice and opportunity to object to the disclosure are being provided to the submitter.

§ 1001.10 Fees.

- (a) We will charge fees that recoup the full allowable direct costs we incur in processing your FOIA request. We will use the most efficient and least costly methods to comply with your request.
- (b) With regard to manual searches for records, we will charge the salary rate(s) (calculated as the basic rate of pay plus 16 percent of that basic rate to cover benefits) of the employee(s) performing the search.

(c) In calculating charges for computer searches for records, we will charge at the actual direct cost of providing the service, including the cost of operating the central processing unit directly attributable to searching for records potentially responsive to your FOIA request and the portion of the salary of the operators/programmers performing the search.

(d) We may only charge requesters seeking documents for commercial use for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review---that is the review undertaken the first time we analyze the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. We may assess the costs for such subsequent review.

(e) Records will be duplicated at a rate of \$.10 per page, except that the Board may adjust this rate from time to time by notice published in the FEDERAL REGISTER. For copies prepared by computer, such as tapes, CDs, DVDs, or printouts, we will charge the actual cost, including operator time, of production. For other methods of reproduction or duplication, we will charge the actual direct costs of producing the document(s). If we estimate that duplication charges are likely to exceed \$25, we will notify you of the estimated amount of fees, unless you indicated in advance your willingness to pay fees as high as those anticipated. Our notice will offer you an opportunity to confer with Board personnel to reformulate the request to meet your needs at a lower cost.

(f) We will charge you the full costs of providing you with the following services:

- (1) Certifying that records are true copies; or
 - (2) Sending records by special methods such as express mail.
- (g) We may assess interest charges on an unpaid bill starting on the 31st calendar day following the day on which the billing was sent. Interest shall be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the billing.
- (h) We will not charge a search fee for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media.
- (i) Except for a commercial use request, we will not charge you for the first 100 pages of duplication and the first two hours of search.
- (j) You may not file multiple requests, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Board reasonably believes that a requester, or a group of requesters acting in concert, has submitted requests that constitute a single request involving clearly related matters, we may aggregate those requests and charge accordingly.
- (k) We may not require you to make payment before we begin work to satisfy the request or to continue work on a request, unless:
- (1) We estimate or determine that the allowable charges that you may be required to pay are likely to exceed \$250; or
 - (2) You have previously failed to pay a fee charged within 30 days of the date of billing.
- (l) Upon written request, we may waive or reduce fees that are otherwise chargeable under this part. If you request a waiver or reduction in fees, you must demonstrate that a

waiver or reduction in fees is in the public interest because disclosure of the requested records is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in your commercial interest.

PART 1002 — IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

1002.1 Purpose.

1002.2 Definitions.

1002.3 Privacy Act requests.

1002.4 Responses to Privacy Act requests.

1002.5 Administrative appeals.

1002.6 Fees.

1002.7 Penalties.

Authority: 5 U.S.C. 552a.

§ 1002.1 Purpose and scope.

The regulations in this part implement the provisions of the Privacy Act.

§ 1002.2 Definitions.

The following terms used in this part are defined in the Privacy Act: individual, maintain, record, system of records, statistical record, and routine use. The following definitions also apply in this part:

Board means the Privacy and Civil Liberties Oversight Board, established by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110-53.

Chairman means the Chairman of the Board, as appointed by the President and confirmed by the Senate under section 801(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110-53, or any person to whom the Board has delegated authority in the matter concerned.

General Counsel means the Board's principal legal advisor, or his or her designee.

Privacy Act means the Privacy Act of 1974, 5 U.S.C. 552a, as amended.

Privacy Act Officer means the person designated by the Chairman to be responsible for the day-to-day administration of the Privacy Act.

§ 1002.3 Privacy Act requests.

(a) Requests to determine if you are the subject of a record. You may request that the Board inform you if we maintain a system of records that contains records about you. Your request must follow the procedures described in paragraph (b) of this section.

(b) Requests for access. You may request access to a Board record about you in writing or by appearing in person. You should direct your request to the Privacy Act Officer. Written requests may be sent to: Privacy Act Officer, Privacy and Civil Liberties Oversight Board, c/o General Services Administration, Agency Liaison Division, 1275 First Street, NE, ATTN: 849C, Washington, D.C. 20417. Your request should include the following information:

- (1) Your name, address, and telephone number;
- (2) The system(s) of records in which the requested information is contained; and
- (3) At your option, authorization for copying expenses.
- (4) Written requests. In addition to the information described in subsection (b)(1)-(3), written requests must include a statement affirming your identity, signed by you and witnessed by two persons (including witnesses' addresses) or notarized.

- (i) Witnessed. If your statement is witnessed, it must include a sentence above the witnesses' signatures attesting that they personally know you or that you have provided satisfactory proof of your identity.

- (ii) Notarized. If your statement is notarized, you must provide the notary with adequate proof of your identity in the form of a drivers' license, passport, or other identification acceptable to the notary.
- (iii) The Board, in its discretion, may require additional proof of identification depending on the nature and sensitivity of the records in the system of records.
- (iv) For the quickest possible handling, your letter and envelope should be marked "Privacy Act Request".

- (5) In person requests. In addition to the information described in paragraphs (b)(1)-(3) of this section, if you make your request in person, you must provide adequate proof of identification at the time of your request. Adequate proof of identification includes a valid drivers' license, valid passport, or other current identification that includes your address and photograph.
- (c) Requests for amendment or correction of records. You may request an amendment to or correction of a record about you in person or by writing to the Privacy Act Officer following the procedures described in paragraph (b) of this section. Your request for amendment or correction should identify each particular record at issue, state the amendment or correction sought, and describe why the record is not accurate, relevant, timely, or complete.
- (d) Requests for an accounting of disclosures. Except for those disclosures for which the Privacy Act does not require an accounting, you may request an accounting of any disclosure by the Board of a record about you. Your request for an accounting of disclo-

tures must be made in writing following the procedures described in subsection (b) of this section.

(e) Requests for access on behalf of someone else.

(1) If you are making a request on behalf of someone else, your request must include a statement from that individual verifying his or her identity, as provided in paragraph (b)(4) of this section. Your request also must include a statement certifying that individual's agreement that records about him or her may be released to you.

(2) If you are the parent or guardian of the individual to whom the requested record pertains, or the individual to whom the record pertains has been deemed incompetent by a court, your request for access to records about that individual must include:

- (i) The identity of the individual who is the subject of the record, including his or her name, current address, and date and place of birth;
- (ii) Verification of your identity in accordance with paragraph (b)(4) of this section;
- (iii) Verification that you are the subject's parent or guardian, which may be established by a copy of the subject's birth certificate identifying you as his or her parent, or a court order establishing you as guardian; and
- (iv) A statement certifying that you are making the request on the subject's behalf.

§ 1002.4 Responses to Privacy Act requests.

(a) Acknowledgement. The Privacy Act Officer shall provide you with a written acknowledgment of your written request under section 3 within ten business days of our receipt of your request.

(b) Grants of requests. If you make your request in person, the Privacy Act Officer shall respond to your request directly, either by granting you access to the requested records, upon payment of any applicable fee and with a written record of the grant of your request and receipt of the records, or by informing you when a response may be expected. If you are accompanied by another person, you must authorize in writing any discussion of the records in the presence of the third person. If your request is in writing, the Privacy Act Officer shall provide you with written notice of the Board's decision to grant your request and the amount of any applicable fee. The Privacy Act Officer shall disclose the records to you promptly, upon payment of any applicable fee.

(c) Denials of requests in whole or in part. The Privacy Act Officer shall notify you in writing of his or her determination to deny, in whole or in part, your request. This writing shall include the following information:

- (1) The name and title or position of the person responsible for the denial;
- (2) A brief statement of the reason for the denial(s), including any applicable Privacy Act exemption;
- (3) A statement that you may appeal the denial and a brief description of the requirements for appeal under § 1002.5.

(d) Request for records not covered by the Privacy Act or subject to Privacy Act exemption. If the Privacy Act Officer determines that a requested record is not subject to

the Privacy Act or the records are subject to Privacy Act exemption, your request will be processed in accordance with the Board's Freedom of Information Act procedures at 6 CFR Part 1001.

§ 1002.5 Administrative Appeals.

(a) Appeal procedures.

(1) You may appeal any decision by the Board to deny, in whole or in part, your request under § 1002.3 no later than 60 days after the decision is rendered.

(2) Your appeal must be in writing, sent to the General Counsel at the address specified in § 1002.3(b) and contain the following information:

- (i) Your name;
- (ii) Description of the record(s) at issue;
- (iii) The system of records in which the record(s) is contained;
- (iv) A statement of why your request should be granted.

(3) The General Counsel shall determine whether to uphold or reverse the initial determination within 30 working days of our receipt of your appeal. The General Counsel shall notify you of his or her decision, including a brief statement of the reasons for the decision, in writing. The General Counsel's decision will be the final action of the Board.

(b) Statement of disagreement. If your appeal of our determination related to your request for amendment or correction is denied in whole or in part, you may file a Statement of Disagreement that states the basis for your disagreement with the denial. Statements of Disagreement must be concise and must clearly identify each part of any record that is disputed. The Privacy Act Officer will place your Statement of Disagreement in the sys-

tem of records in which the disputed record is maintained and shall mark the disputed record to indicate that a Statement of Disagreement has been filed and where it may be found.

(c) Notification of amendment, correction, or disagreement. Within 30 working days of the amendment or correction of a record, the Privacy Act Officer shall notify all persons, organizations, or agencies to which the Board previously disclosed the record, if an accounting of that disclosure was made, that the record has been corrected or amended. If you filed a Statement of Disagreement, the Privacy Act Officer shall append a copy of it to the disputed record whenever it is disclosed and also may append a concise statement of its reason(s) for denying the request to amend or correct the record.

§ 1002.6 Fees.

We will not charge a fee for search or review of records requested under this part, or for the correction of records. If you request copies of records, we may charge a fee of \$.10 per page.

§ 1002.7 Penalties.

Any person who makes a false statement in connection with any request for a record or an amendment or correction thereto under this part is subject to the penalties prescribed in 18 U.S.C. 494 and 495 and 5 U.S.C. 552a(i)(3).

PART 1003 — IMPLEMENTATION OF THE GOVERNMENT IN THE SUN-SHINE ACT

Sec.

1003.1 Purpose and scope.

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Authority: 5 U.S.C. 552b.

§ 1003.1 Purpose and scope.

- (a) The regulations in this part implement the provisions of the Sunshine Act.
- (b) Requests for all records other than those described in section 1003.9 of this part, shall be governed by the Board's Freedom of Information Act procedures at 6 CFR Part 1001.

§ 1003.2 Definitions.

The following definitions apply in this part:

Board means the Privacy and Civil Liberties Oversight Board, established by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110-53.

Chairman means the Chairman of the Board, as appointed by the President and confirmed by the Senate under section 801(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110-53, or any person to whom the Board delegated authority in the matter concerned.

General Counsel means the Board's principal legal advisor, or his or her designee.

Meeting means the deliberations of three or more Board members that determine or result in the joint conduct or disposition of official Board business. A meeting does not include:

- (1) Notational voting or similar consideration of business for the purpose of recording votes, whether by circulation of material to members individually in writing or by a polling of the members individually by phone.

(2) Action by three or more members to:

- (i) Open or close a meeting or to release or withhold information pursuant to section 1003.6 of this part;
- (ii) Set an agenda for a proposed meeting;
- (iii) Call a meeting on less than seven days' notice, as permitted by § 1003.4; or
- (iv) Change the subject matter or the determination to open or to close a publicly announced meeting under § 1003.7.

(3) A session attended by three or more members for the purpose of having the Board's staff or expert consultants, another federal agency, or other persons or organizations brief or otherwise provide information to the Board concerning any matters within the purview of the Board, provided that the members do not engage in deliberations that determine or result in the joint conduct or disposition of official business on such matters.

(4) A gathering of members for the purpose of holding informal, preliminary discussions or exchanges of views which do not effectively predetermine official action.

Member means an individual duly appointed and confirmed to the Board.

Public observation means attendance by the public at a meeting of the Board, but does not include public participation.

Public participation means the presentation or discussion of information, raising of questions, or other manner of involvement in a meeting of the Board by the public in a manner that contributes to the disposition of official Board business.

Sunshine Act means the Government in the Sunshine Act, 5 U.S.C. 552b.

§ 1003.3 Open meetings.

- (a) Except as otherwise provided in this part, every portion of a Board meeting shall be open to public observation.
- (b) Board meetings, or portions thereof, shall be open to public participation only when an announcement to that effect is published under § 1003.4. Public participation shall be conducted in an orderly, non-disruptive manner and in accordance with any procedures the Chairman may establish. Public participation may be terminated at any time for any reason.
- (c) The General Counsel or his or her designee will attend and monitor all briefings and informal, preliminary discussions excluded from the definition of meeting in section 1003.2 of this part to assure that those gatherings do not proceed to the point of becoming meetings.
- (d) The General Counsel or his or her designee will inform members if developing discussions at a briefing or gathering should be deferred for a meeting conducted pursuant to the Sunshine Act and these regulations.

§ 1003.4 Procedures for public announcement of meetings.

- (a) Except as otherwise provided in this section, the Board shall make a public announcement at least seven days prior to a meeting. The public announcement shall include:
 - (1) The time and place of the meeting;
 - (2) The subject matter of the meeting;
 - (3) Whether the meeting is to be open, closed, or portions of a meeting will be closed;
 - (4) Whether public participation will be allowed;

- (5) The name and telephone number of the person who will respond to requests for information about the meeting;
- (b) The seven day prior notice required by section 1003.4(a) may be reduced only if:
 - (1) A majority of all members determine by recorded vote that Board business requires that such meeting be scheduled in less than seven days; and
 - (2) The public announcement required by this section is made at the earliest practicable time.
- (c) If public notice is provided by means other than publication in the FEDERAL REGISTER, notice will be subsequently published in the FEDERAL REGISTER.

§ 1003.5 Grounds on which meetings may be closed or information withheld.

A meeting, or portion thereof, may be closed and information pertinent to such meeting withheld if the Board determines that the meeting or release of information is likely to disclose matters that are:

- (a) Specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy; and, in fact, are properly classified pursuant to such executive order. In making the determination that this exemption applies, the Board shall rely on the classification assigned to the document from the federal agency from which the document was received.
- (b) Related solely to the internal personnel rules and practices of the Board;
- (c) Specifically exempt from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:
 - (1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

- (2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (e) Involved with accusing any person of a crime or formally censuring any person;
- (f) Of a personal nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (g) Either investigatory records compiled for law enforcement purposes or information which, if written, would be contained in such records, but only to the extent that the production of records or information would:
 - (1) Interfere with enforcement proceedings;
 - (2) Deprive a person of a right to either a fair trial or an impartial adjudication;
 - (3) Constitute an unwarranted invasion of personal privacy;
 - (4) Disclose the identity of a confidential source or sources and, in the case of a record compiled either by a criminal law enforcement authority or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source(s);
 - (5) Disclose investigative techniques and procedures; or
 - (6) Endanger the life or physical safety of law enforcement personnel;
- (h) Contained in or relating to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

- (i) If prematurely disclosed, likely to significantly frustrate implementation of a proposed action of the Board, except that this subsection shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; and
- (j) specifically concerned with the Board's issuance of a subpoena, or its participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Board of a particular case or formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 1003.6 Procedures for closing meetings or withholding information, and requests by affected persons to close a meeting.

- (a) A meeting or portion of a meeting may be closed and information pertaining to a meeting withheld under § 1003.5 only by vote of a majority of members.
- (b) A separate vote of the members shall be taken with respect to each meeting or portion of a meeting proposed to be closed and with respect to information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings or portions of a meeting that are proposed to be closed, so long as each meeting or portion thereof in the series involves the same particular matter and is scheduled to be held no more than 30 days after the initial meeting in the series. The vote of each member shall be recorded and no proxies shall be allowed.
- (c) A person whose interests may be directly affected by a portion of a meeting may request in writing that the Board close that portion for any of the reasons referred to in §

1003.5(e), (f), and (g). Upon the request of a member, a recorded vote shall be taken whether to close such meeting or portion thereof.

(d) For every meeting closed, the General Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant basis for closing the meeting. If the General Counsel invokes the bases set forth in §1003.5(a) or (c), he/she shall rely upon the classification or designation assigned to the information by the originating agency. A copy of such certification, together with a statement by the presiding officer setting forth the time and place of the meeting and the persons present, shall be retained by the Board as part of the transcript, recording, or minutes required by § 1003.8.

§ 1003.7 Changes following public announcement.

(a) The time or place of a meeting may be changed following the public announcement described in section 1003.4 only if the Board publicly announces such change at the earliest practicable time. Members need not approve such change.

(b) The subject matter of a meeting or the determination of the Board to open or close a meeting, or a portion thereof, to the public may be changed following public announcement if:

(1) A majority of all members determine by recorded vote that Board business so requires and that no earlier announcement of the change was possible; and

(2) The Board publicly announces such change and the vote of each member thereon at the earliest practicable time.

(c) The deletion of any subject matter announced for a meeting is not a change requiring the approval of the Board under subsection (b) of this section.

§ 1003.8 Transcripts, recordings, or minutes of closed meetings.

Along with the General Counsel's certification and presiding officer's statement referred to in § 1003.6(d), the Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or a portion thereof, closed to the public. Alternatively, for any meeting closed pursuant to § 1003.5(h) or (j), the Board may maintain a set of minutes adequate to record fully the proceedings, including a description of each of the views expressed on any item and the record of any roll call vote.

§ 1003.9 Public availability and retention of transcripts, recordings, and minutes, and applicable fees.

- (a) The Board shall make available to the public the transcript, electronic recording, or minutes of a meeting, except for items of discussion or testimony related to matters the Board determines may be withheld under § 1003.6.
- (b) Copies of the nonexempt portions of the transcripts or minutes shall be provided upon request at the actual costs of the transcription or duplication.
- (c) The Board shall maintain meeting transcripts, recordings, or minutes of each meeting closed to the public for a period ending at the later of two years following the date of the meeting, or one year after the conclusion of any Board proceeding with respect to the closed meeting.

PARTS 1004 – 1099 [Reserved]

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Claire McKenna,
Legal Counsel.

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